Dato Annas bin Khatib Jaafar v Datuk Manja Ismail & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO S-23–37 OF 2007
PRASAD ABRAHAM JC
28 FEBRUARY 2011

Tort — Defamation — Libel — Newspaper articles — Whether publication of articles defamed plaintiff — Impugned article reporting allegations of wrong doing and not conclusive finding of fault against management of Lembaga Kemajuan Ikan Malaysia of which plaintiff was Director General — Impugned article making no reference at all to plaintiff — Whether article defamatory of plaintiff

Tort — Defamation — Qualified privilege — Publication of alleged defamatory article in newspaper — Concept of 'responsible journalism' — Rights of plaintiff to protection of reputation as opposed to freedom of expression — Whether article advanced matters of public interest within confines of responsible journalism — Whether defence of qualified privilege available

This was an action for libel by the plaintiff against the defendants arising from an article appearing on the front page of the issue of the Berita Harian dated 10 April 2007 in a report headlined, 'the construction of Kuala Lumpur Kedah LKIM complex to ACA' ('the impugned article'). The first to the third defendants contended that the plaintiff had failed to establish the impugned article was defamatory in its entirety and that even it could be construed as defamatory, the impugned article made no reference to the plaintiff. The defendants also raised the defence of qualified privileged and responsible reportage claiming that there was no malice on the part of the defendants.

Held, dismissing the plaintiff's claim with costs:

(1) The impugned article reported allegations of wrong doing and was not a conclusive finding of fault against the Management of Lembaga Kemajuan Ikan Malaysia ('LKIM') save and except at the end where the comments of the plaintiff was sought in his capacity as Director General of LKIM. The court was unable to find anything defamatory in relation to the plaintiff in respect of the matters raised in the impugned article (see para 3).

(2) Those who knew the plaintiff especially members of the Administrative and Diplomatic Service, would know the report referred merely to a complaint to the Anti-Corruption Agency. Further they would be aware when the plaintiff took over as Director General of LKIM and that the

matters referred to in the impugned article were before his appointment. The impugned article further made no reference to the plaintiff at all, to say that it was defamatory of the plaintiff. The alleged complaint was against the management of LKIM of which the plaintiff was the Director General (see para 5).

(3) Looking at the impugned article as a whole and giving the same its natural and ordinary meaning, it remained an alleged complaint against the management of LKIM and not the plaintiff singularly (see para 6).

(4) The defence of qualified privilege through the concept of 'responsible journalism' gives a certain degree of latitude surrounding newspaper publications not available previously. It is a question of the rights of the plaintiff to the protection of his own reputation as opposed to the freedom of expression and the role of the media in modern society. So long as the defendant advanced matters of public interest within the confines of responsible journalism, they were always be in a position to enjoin the court to declare the reassertion of the guarantee to the freedom of speech enshrined under art 10 of the Federal Constitution. This approach would be consonant with the aspirations of modern society for transparency and accountability whilst protecting against blatant maligning of the reputation of individuals (see paras 16 & 21).

[Bahasa Malaysia summary

Ini adalah tindakan untuk fitnah oleh plaintif terhadap defendan-defendan berbangkit daripada artikel yang terbit pada muka hadapan *Berita Harian* bertarikh 10 April 2007 dalam laporan yang bertajuk, 'the construction of Kuala Lumpur Kedah LKIM complex to ACA' ('artikel tersebut'). Defendan-defendan pertama hingga ketiga berhujah bahawa plaintif telah gagal untuk membuktikan artikel tersebut adalah fitnah dalam keseluruhannya dan bahawa walaupun ia boleh ditafsirkan sebagai fitnah, artikel tersebut tidak membuat apa-apa rujukan kepada plaintif. Defendan-defendan juga membangkitkan pembelaan perlindungan bersyarat dan pelaporan bertanggungjawab yang mendakwa bahawa tidak terdapat niat jahat pada pihak defendan-defendan.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Artikel tersebut melaporkan tuduhan-tuduhan perbuatan salah dan bukan dapatan konklusif mengenai kesalahan terhadap Pengurusan Lembaga Kemajuan Ikan Malaysia ('LKIM') kecuali pada akhir artikel tersebut di mana komen-komen plaintif diperolehi dalam kapasitinya sebagai Ketua Pengarah LKIM. Mahkamah tidak boleh mendapati apa-apa fitnah berkaitan plaintif berkenaan perkara-perkara yang dibangkitkan di dalam artikel tersebut (lihat perenggan 3).

(2) Sesiapa yang mengenali plaintif terutamanya ahli-ahli Khidmat Pentadbiran dan Diplomatik, akan tahu bahawa laporan yang dirujuk semata-mata kepada aduan kepada Agensi Anti Rasuah. Selanjutnya mereka akan tahu semasa plaintif mengambil alih sebagai Ketua Pengarah LKIM dan perkara-perkara yang dirujuk di dalam artikel tersebut adalah sebelum pelantikannya. Artikel tersebut selanjutnya tidak membuat apa-apa rujukan langsung kepada plaintif, untuk mengatakan bahawa ia adalah memfitnah plaintif. Aduan yang didakwa adalah terhadap pengurusan LKIM yang mana plaintif adalah Ketua Pengarah (lihat perenggan 5).

(3) Melihat kepada artikel tersebut secara keseluruhannya dan memberinya maksud lazim dan biasa, ia kekal aduan yang didakwa terhadap pengurusan LKIM dan bukan plaintif semata-mata (lihat perenggan 6).

(4) Pembelaan perlindungan bersyarat melalui konsep 'responsible journalism' memberi tahap kebebasan sekitar penerbitan suratkhabar yang sebelumnya tidak terdapat. Ia adalah persoalan hak plaintif kepada perlindungan reputasinya sendiri bertentangan kebebasan penyataan dan peranan media di dalam masyarakat moden. Asalkan defendan-defendan mengutarakan perkara-perkara kepentingan awam dalam lingkungan pelaporan bertanggungjawab, mereka sentiasa dalam kedudukan untuk menyuruh mahkamah untuk mengisytiharkan penegasan jaminan kebebasan bersuara yang disemadikan di bawah perkara 10 Perlembagaan Persekutuan. Pendekatan ini akan sejajar dengan aspirasi masyarakat moden untuk transparensi dan kebertanggunjawapan sementara melindungi terhadap memfitnah terang-terangan terhadap reputasi individu (lihat perenggan 16 & 21).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 369–527.

For cases on qualified privilege, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 576–590.

Cases referred to

Chok Foo Choo & The China Press Bhd [1999] 1 MLJ 373, CA (refd)

Dato' Seri Anwar Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492; [2010] 5 CLJ 301, HC (refd)

Halim bin Arsyat v Sistem Televisyen Malaysia Bhd & Ors [2001] 6 ML J 353, HC (refd)

Jameel & Ors v Wall Street Journal Europe Sprl [2007] 1 AC 359, HL (refd)

Knupffer v London Express Newspaper Ltd [1944] AC 116, HL (refd)

Reynolds v Times Newspaper Ltd [2001] 2 AC 127, HL (refd)

Sivabalan a/l P Asapathy v New Straits Times Press (M) Sdn Bhd [2010] 9 MLJ 320; [2010] 7 CLJ 885, HC (refd)

Tan Sri Dato' Tan Kok Ping, JP lwn The New Strait Times Press (M) Bhd dan lain-lain dan satu lagi guaman [2010] 2 MLJ 694; [2010] 3 CLJ 614, HC (folld)
Veitch v De Mornay [1878] Ky 418 (refd)

Legislation referred to

Federal Constitution art 10

Shamsul Bahrain (Dasuki & Co) for the plaintiff.
Rueben Mathiazargan (BH Lawrence & Co) for the first, second and third defendants.

Prasad Abraham JC:

[1] This is an action for libel by the plaintiff against the defendants. The basis of the plaintiffs suit arises from an article appearing on the front page of the issue of the *Berita Harian* dated 10 April 2007 in a report headlined, 'the construction of Kuala Lumpur Kedah LKIM complex to ACA' set out in paras 3 and 4 of the statement of claim (bundle A) referred to in my judgment as the impugned article. The defamatory elements and innuendoes of the impugned article have been set out in para 6 of the statement of claim. The first to the third defendants have raised the following defences namely:

(a) the plaintiff had failed to establish the impugned article was defamatory in its entirety;

(b) even it could be construed as defamatory, the impugned article made no reference to the plaintiff; and

(c) the defendants could on the facts of this case rely on the defence of qualified privileged and responsible reportage as there was an absence of malice on the part of the first to the third defendants. The fourth defendant was not represented at the trial neither was a defence filed, and after the conclusion of the trial, I dismissed the plaintiff's claim against the first to the third defendants with costs and I append below my grounds for so doing.

[2] In determining whether the plaintiff had proved the impugned article was defamatory, I kept in mind the propositions from the text *Evans on Defamation in Singapore and Malaysia* (3rd Ed) at pp 10–11 and I quote:

> In applying these various tests, the courts must look to a particular control group — that is, in whose eyes must the estimation of the plaintiff be lowered before the words are said to be defamatory. It has been said that the court will look at the words from the point of view of the law-abiding citizen, that of the average thinking man, the ordinary, reasonable person, or that of right thinking members of society in

general. In determining the issue, the courts do not look to the actual effect of the allegations on the person's reputation, or that meaning of the words actually understood or taken by listeners. It is not enough that listeners actually take the words in a defamatory sense, for they must be reasonably justified in so understanding the words before they are found to be defamatory. The test or the defamatory nature of a statement is therefore its tendency to excite against the plaintiff the adverse opinion of those within the control group selected by the court. If the words have such a tendency, they will be held to be defamatory, even though no one may actually believe the statement to be true. It therefore follows that untruth alone will not make a statement defamatory.

[3] The impugned article reports allegations of wrong doing and is not a conclusive finding of fault against the Management of Lembaga Kemajuan Ikan Malaysia ('LKIM') save and except at the end where the comments of the plaintiff is sought in his capacity as Director General of LKIM and the plaintiff's answer in the impugned article is as set out below ie 'Kalau ada, sudah tentu BPR panggil saya', katanya yang kini bercuti sebelum bersara pada 23 April ini'.

[4] Having read the impugned article over and over again, the court is unable to find anything defamatory in relation to the plaintiff in respect of the matters raised in the impugned article. The court refers to the submission of counsel for the plaintiff on this point and I quote:

10. In his testimony PW-2 told the Court that the highest executive appointment in LKIM was the Director-General and the Berita Harian report itself was sufficient to indicate that it was referring to the plaintiff when they contacted Dato' Annas to obtain verification. Moreover, he added:

10.1 those who knew Dato' Annas would automatically conclude that the person referred to in the report was none other than Dato' Annas bin Khatib Jaafar, the Director Geneal of LKIM;

10.2 the entire officers corps in the Administrative and Diplomatic Service would know that the person referred to in the report was Dato' Annas as their fellow officer;

10.3 the entire members and the committee members of the State Fisherman Association and the National Association of Fishermen registered with LKIM would know that the person meant was Dato' Annas their Registrar of Fishermen Associations;

10.4 all the employees and officers of LKIM throughout the country would know that the one being accused was Dato' Annas, their head;

10.5 over and above, Dato Annas was expressly named in the report;

10.6 matters pertaining to management were placed on the shoulders of Dato' Annas;

10.7 Against all these, the defendants plead that the only occasion to the plaintiff

in the article bore no connection to the substance of the article but merely pointed out the fact that the comments or his version of the events were sought as to the allegations, which in no way attributed any imputation of guilt on the plaintiff personally and/or on the management of LKIM

10.8 this is what we call: Lempar batu sembunyikan tangan: to throw a stone and hide the hind that did it. A treacherous game.

[5] Those who knew the plaintiff especially members of the Administrative and Diplomatic Service, would know the report referred merely to a complaint to the Anti-Corruption Agency ('ACA'). Further they would be aware when the plaintiff took over as Director General of LKIM and that the matters referred to in the impugned article were before his appointment. The impugned article further makes no reference to the plaintiff at all, to say that it is defamatory of the plaintiff. The alleged complaint is against the management of LKIM of which the plaintiff was the Director General. The plaintiff concedes in cross-examination the impugned article makes no reference to him.

[6] Looking at the impugned article as a whole and giving the same its natural and ordinary meaning, it remains an alleged complaint against the management of LKIM and not the plaintiff singularly. The plaintiff further conceded in cross examination that these complaints and allegations had to be investigated.

[7] The alleged defamatory sting to the impugned article which essentially are allegations being made to enable the same to be fully investigated is confined to that and no more. See *Sivabalan a/l P Asapathy v New Straits Times Press (M) Sdn Bhd* [2010] 9 MLJ 320; [2010] 7 CLJ 885 the decision of His Lordship Mohd Zawawi Salleh J where he held:

(1)The news report merely makes an allegation of rape, among others, against the plaintiff as opposed to saying that the plaintiff is guilty of rape and several other allegations. Thus, the 'sting' of the new report is that the plaintiff is merely suspected of alleged to have committed the acts referred to and that the police have detained him for investigations. Further, the plaintiff's witness SP1 and SP2, agreed during cross, examination that when read as a whole and in its context, the news report merely contained allegations against the plaintiff rather than factual statements imputing guilt on the plaintiff. Therefore, the words complained of in the news report are not defamatory of the plaintiff. The plaintiff has failed to establish the first element required in order to maintain a cause of action in defamation.

[8] Note: p 886 of the report para (D to F) see also the case of *Tan Sri Dato' Tan Kok Ping, JP lwn The New Strait Times Press (M) Bhd dan lain-lain dan satu lagi guaman* [2010] 2 MLJ 694; [2010] 3 CLJ 614 the decision of His Lordship Ghazali Cha J. Note p 615 of the report where it was held:

(1) Beban pembuktian adalah ke atas plaintif untuk membuktikan bahawa defendan-defendan menyiarkan laporan akhbar itu bersifat 'express or actual malice'. Tidak dipertikaikan bahawa pada masa penyiaran artikel-artikel berkenaan, penyiasatan polis masih di peringkat awal dan pihak polis pun belum mengeluarkan kenyataan rasmi mengenainya untuk pengetahuan umum tetapi defendan-defendan, khususnya, defendan ketiga langsung tidak mencuba menghubungi plaintif untuk penjelasan terhadap alegasi mengatakan plaintif telah menggunakan surat palsu untuk mendapat kedudukannya itu dalam Magnum Corporation Bhd.

(2) Pembaca akhbar tidak akan membuat keputusan bahawa plaintif didapati bersalah hanya atas fakta beliau dipanggil untuk membuat siasatan dan percakapannya dirakamkan. Memandangkan bahawa sumber itu diperolehi daripada Dato Maizan, Ketua Bahagian Siasatan Jenayah Perdagangan Bukit Aman di Kuala Lumpur, iaitu orang yang berkuasa dan berhak untuk mengeluarkan kenyataan berkaitan dengan siasatan tersebut, maka bukanlah tugas defendan-defendan, khususnya defendan ketiga, untuk menghubungi plaintif bagi mendapatkan komen beliau berkaitan dengan kebenaran berita itu. Ini jelas memenuhi kehendak s 5 Bahagian Kedua Jadual kepada Akta Fitnah1957.

[9] Based on the aforesaid, I agree with submissions of counsel for the first to third defendants, the plaintiff have failed to prove the impugned article is defamatory.

[10] Be that as it may, if it is found the plaintiff had established the first ingredient of establishing defamation, I find as a fact and in law the plaintiff had failed to establish the second ingredient before a case for defamation can be made out ie the impugned article was defamatory of the plaintiff. The impugned article does not impute any of the allegations referred to in the said impugned article to the plaintiff directly. In fact the plaintiff is not even named save and except for reference to the plaintiff as the director general of LKIM when clarification was sought for him in that capacity by the first to the third defendants. The plaintiff in his evidence testified that in his capacity as Director General he would have to respond to the press when queried, on matters involving LKIM. The impugned article cannot in my view in law be regarded as capable of referring to the plaintiff. See *Knupffer v London Express Newspaper Ltd* [1944] AC 116. A decision of the House of Lords where it was held:

> It is an essential element of the cause of action for defamation that the words complained of should be published 'of the plaintiff'. Where he is not named the test of this is whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him. If a defamatory statement made of a class or group can reasonably be understood to refer to every member of it, each one has a cause of action.

[11] The plaintiff to establish this ingredient called PW2, the legal officer of LKIM at the material time who presumably reported to the plaintiff. I agree with submissions of counsel for the first to third defendants, PW2 would clearly have identified the plaintiff as being referred to in the impugned article for he would been aware of the alleged complaint. In my view you would have needed to call someone from the administrative and diplomatic service to testify at the very least as to whether he or she thought the alleged complaints in the impugned article referred to the plaintiff. Be that as it may, being Director General of LKIM does not as a matter of law mean the impugned article is defamatory of the plaintiff personally. See the case of *Halim bin Arsyat v Sistem Televisyen Malaysia Bhd & Ors* [2001] 6 ML J 353. The judgment of Kamalanathan Ratnam J. Looking at the impugned article, the court would answer the question whether it was defamatory of the plaintiff in the negative.

[12] Also I refer to the case of *Veitch v De Mornay* [1878] Ky 418 the judgment of Wood J at p 419. The facts of the case being:

> This was an action of slander. The declaration in the first count stated, that at the time of the committing of the grievances hereinafter mentioned, the plaintiff was in the service of the Colonial Government of the Straits Settlements, as Colonial surgeon and Senior Medical Officer in charge of the Government Hospitals in Penang and Province Wellesley, and, as such was responsible for the good management, order and conduct of the said Hospitals, and the defendant falsely and maliciously spoke and published of the plaintiff, in relation to the Government General Hospital in Penang aforesaid, the words following, 'It stunk, it 'stunk,' meaning thereby that the said Government General Hospital was badly and negligently managed and conducted under the plaintiff's superintendence, that the said Hospital stunk: whereby the plaintiff was injured in his credit and reputation as a medical man, and in his said Office of Colonial Surgeon and Senior Medical Officer, in charge of the said Hospitals.
>
> The second count began as the first and continued, and as such was responsible for the good management, order and conduct of the said Hospitals, and the proper medical treatment of the patients therein, and defendant falsely, &c, spoke &c, of the plaintiff, in relation to the Government Hospital at Butterworth, the words, &c, People are sent in curable, and sent out in curable, meaning thereby that patients are sent into Butterworth Hospital curable, but owing to the negligence and unskillful treatment they receive there, they are sent out incurable, whereby the plaintiff was injured, &c, as before.
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> In the judgment of Wood J and I quote 'As was obvious from the opening of the case, the plaintiff has failed to shew actual malice on the part of the defendant towards the plaintiff, nor has it been shewn that the words used referred to the plaintiff personally — nor — if indeed, such a proposition was capable of proof — that the plaintiff was responsible for any misconduct in the public hospitals, of which he was not himself guilty'.

[13] Thus, the plaintiff case was non-suited.

[14] The third ingredient of establishing the tort of defamation ie publication has been clearly established and is not really in dispute. However it is incumbent upon the plaintiff to prove all these ingredients before this court needs even to consider the defence of the first to the third defendants. I refer to the decision of the Court of Appeal in *Chok Foo Choo & the China Press Bhd* [1999] 1 MLJ 373. Wherein in the leading judgment of the court Gopal Sri Ram JCA said:

> It cannot, I think, be doubted that the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v Skelton* [1963] 3 All ER 952 at p 958:
>
> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning of words (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning many therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.
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> In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[15] The court finds the answer to the question that the court would be required to pose would be in the negative and therefore the plaintiff had failed to make out a case for defamation against the first, second and third defendant.

[16] In the event the court is held to be wrong in finding that the plaintiff had not made up a case for defamation, then the court has to look at the defence of qualified privilege through the concept of 'responsible journalism' which gives a certain degree of latitude surrounding newspaper publications not available previously. It is a question of the rights of the plaintiff to the protection of his own reputation as opposed to the freedom of expression and the role of the media in modern society.

[17] I refer to the decision of His Lordship Harmindar Singh Dhaliwal JC in the case of *Dato' Seri Anwar Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492; [2010] 5 CLJ 301 wherein His Lordship had set up as an introduction, the jurispudential approach in the balancing of these conflicting aspirations and rights in pp 6–7 of his judgment and I quote:

> This case is about a man's reputation. What is reputation? There is no precise concept or definition. According to the *Oxford English Dictionary*, reputation means 'what is generally said or believed about a man's character or standing'. But reputation is different from character in that a person's character is what he or she in fact is whereas a person's reputation is what other people think he or she is. In theory therefore, an unrevealed scoundrel may actually have an excellent reputation.
>
> In any discussion of reputation, there is the customary or some say obligatory reference to Shakespeare's characterisation of 'good name' as the 'immediate jewel' of the soul. *The 'purse' was 'trash'* when compared to the value of a 'good name'. Some believe that reputation is a form of honour. *So dishonour or loss of face* is an absolute fall from grace. As Shakespeare depicted:
>
> Mine honour is my life, both grow in one,
>
> Take honour from me and my life is done.
>
> Reputation has also been equated with the protection of dignity. In *Rosenblatt v Baer and Stewart* J observed:
>
> The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being - a concept at the root of any system of ordered liberty.
>
> There is therefore no doubt as to the value of reputation even if articulating it or its limits with precision is complicated. In terms of its practicality and relation to modern life, Lord Nicholls in *Reynolds v Times Newspapers Ltd* asserted:
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> Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of his reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad.

This case is also about freedom of expression and the related role of the media. The most durable argument in favour of free speech is the importance of open and free discussion to the discovery of truth which was no doubt influenced by the thesis of Milton and Mill. The famous pronouncement of Holmes J in *Abrams v United States* asserts that all truths are relative but 'the best test of truth is the power of the thought to get itself accepted in the competition of the market'. Similarly, the eloquent statement of Learned Hand J in *United States v Associated Press*: 'right conclusions are more likely to be gathered out by a multitude of tongues than through any kind of authoritative selection'. Another argument sees free speech as an integral aspect of an individual's right to self-development and fulfillment. The idea is that only free discussion will allow one to develop intellectually, spiritually and politically. But the most potent theory is the protection of the rights of all citizens to understand political issues so that they could participate effectively in the democratic process. This freedom allows them to make an informed choice of their representatives who in turn will be expected to make informed decisions. It will be through the media that such citizens will get the information. If freedom of expression is to have any meaning or purpose, the role of the media in this regard should not be unduly inhibited or curtailed without proper justification. Finally, this case is also about the law of defamation. The law of defamation is invoked when an individual claims that a particular media publication affects his or her reputation. Paradoxically as it may seem, the law of defamation exists to protect reputations and maintain free speech. The main issue here is the approach to be adopted in reconciling the competing right of free speech of the media and the right to reputation.

[18] The law in this field has been set out in the leading case of *Reynolds v Times Newspaper Ltd* [2001] 2 AC 127. The House of Lords as per the judgment of His Lordship Lord Nicholls formulated an illustrative and non-exhaustive ten point circumstantial test of responsible journalism. The factors or circumstances to be considered are as below bearing in mind they should vary from case to case and a practical and flexible approach should be adopted taking into account the facts of each case.

(a) *The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.*

In this case the chairman of LKIM made reference to a report being lodged with the ACA with regard to impropriety in respect of the management of LKIM and the activities being carried out without the approval of the board of LKIM. The court is of the view that this ingredient has been fulfilled.

(b) *The nature of the information and the extent to which the subject matter is a matter of public concern.*

Here LKIM is a statutory body set up to look after the interest and welfare of fishermen and the fishing industry and surely the public has an interest in the going-ons of LKIM.

(c) *The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to frind, or are being paid for their stories.*

The source of information came from none other than the chairman of LKIM. Further the first to the third defendant, upon checking with ACA, had the ACA confirm that there was a report.

(d) *The steps taken to verify the information.*

It is clear from the evidence that the defendant attempted to speak to the plaintiff to confirm the investigation and also contacted the ACA.

(e) *The status of the information. The allegation may have already been the subject of an investigation which commands respect.*

The evidence shows that the guideline have been fulfilled.

(f) *The urgency of the matter. News is often a perishable commodity*

In view of the seriousness of the allegation, the matter was urgent.

(g) *Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. (Note: an approach to the plaintiff will not always be necessary)*

Evidence shows that the defendant did seek clarification from the plaintiff and the plaintiff has admitted to that fact.

(h) *Whether the article contained the gist of the plaintiff's side of the story.*

The plaintiff side of the story was not published as the plaintiff statement was only confined to his brief statement:

> 'Kalau ada, sudah tentu BPR panggil saya', katanya yang kini bercuti sebelum bersara pada 23 April ini.

However the first to the third defendants in subsequent articles published articles carrying statements from the relevant Ministers vindicating LKIM. See bundle B p 3 and I quote:

> Jawatankuasa audit yang dilantik Kementerian Pertanian dan Industri Asas Tani mendapati tiada unsur penyelewengan dalam pemberian kontrak pembinaan Kompleks Lembaga Kemajuan Ikan Malaysia (LKIM) Kuala Kedah di Kampung Geluncur.
> Menteri Pertanian dan Industri Asas Tani, Tan Sri Muhyiddin Mohd Yassin, berkata jawatankuasa itu mendapati dakwaan Pengerusi LKIM, Adam Hamid berhubung isu itu tidak membabitkan kepincangan penyelewangan tetapi hanya persepsi dan andaian semata-mata.

A

> Perbalahan itu mendapat reaksi Perdana Menteri, Datuk Seri Abdulah Ahmad Badawi yang meminta pihak yang berbalah secara terbuka mengenai masalah dalaman jabatan berhenti serta-merta dan bersemuka untuk menangani sebarang perselisihan atau masalah yang dihadapi.

B

(i) *The tone of the article. A newspaper can raise gueries or call for an investigation. It should not adopt allegations as statements of facts.*

The court is of the view that the tone of the impugned article purely raises queries and does not adopt allegations as to the statement of facts.

C

(h) *The circumstances of publication, including the timing.*

The evidence shows that it has been fulfilled.

D

[19] In the the case of *Dato' Seri Anwar Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492; [2010] 5 CLJ 301, the learned judge painstakingly analysed and reviewed the law on responsible journalism and its importation into our law of defamation which would be found at pp 19–25 of his judgment.

E

[20] I also make reference to the decision of House of Lords in the case of *Jameel & Ors v Wall Street Journal Europe Sprl* [2007] 1 AC 359 wherein the House of Lords held:

F

> Two question have to be considered before defence of qualified privilege by virtue of responsible journalism can be made up. The first question was whether the impugned articles considered as a whole were a matter of public interest. If the articles as a whole were concerned of public interest, than the next question was whether the inclusion of the impugned statement was justifiable. Looking at the conduct of the first,second and third defendants, the court holds the answer to both these questions are in the affirmative and therefore the defence of responsible journalism has been made up. It is also the view of this court that the first, second and third defendants had behaved fairly and responsibly in publishing the impugned statement and the court has to apply the aforesaid test in a practical flexible manner having regard to practical realities.

G

H

[21] It is the view of this court that so long as the defendant advanced matters of public interest within the confines of responsible journalism, they were always be in a position to enjoin the court to declare the reassertion of the guarantee to the freedom of speech enshrined under art 10 of the Federal Constitution. This approach would be consonant with the aspirations of modern society for transparency and accountability whilst protecting against blatant maligning of the reputation of individuals.

I

[22] For these reasons I dismissed the plaintiff's claim against the first, second and third defendants with costs.

Plaintiff's claim dismissed with costs.

Reported by Kanesh Sundrum